

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 14-cr-03758 JCH

LUIS MENDOZA-ALARCON,

Defendant.

**MEMORANDUM OPINION AND ORDER DENYING DEFENDANT’S MOTION FOR
REDUCTION IN SENTENCE AND COMPASSIONATE RELEASE**

This matter comes before the Court on Defendant Luis Mendoza-Alarcon’s pro se *Motion to Reduce Sentence Under 18 U.S.C. § 3582 and First Step Act of 2018* (ECF No. 313).¹ Mr. Mendoza-Alarcon has neither exhausted his administrative remedies nor proven that extraordinary and compelling reasons warrant a sentence reduction, so the Court denies his motion.

I. Background

On June 2, 2017, a jury found Mr. Mendoza-Alarcon guilty of a conspiracy to traffic five kilograms or more of cocaine. *See* Verdict 1 (ECF No. 202); *see also* Redacted Superseding Indictment 1 (ECF No. 80) (charging conspiracy, under 21 U.S.C. § 846, to possess with intent to distribute a controlled substance, contrary to 21 U.S.C. § 841(a)(1), (b)(1)(A)). On January 11, 2018, the Court sentenced Mr. Mendoza-Alarcon to 144 months in prison. *See* Sentencing Proceedings Mins. Sheet 1 (ECF No. 250).

¹ Because Mr. Mendoza-Alarcon proceeds pro se, the Court construes his brief liberally but does not serve as his advocate. *See United States v. Williams*, 848 F. App’x 810, 811 n.1 (10th Cir. 2021).

Mr. Mendoza-Alarcon wrote to the Court on March 11, 2021. *See* Mot. to Reduce Sentence 1 (ECF No. 313). He asked for clemency through the First Step Act. *See id.* The Court interprets his request as a motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

II. Exhaustion of Administrative Remedies

Mr. Mendoza-Alarcon must first prove that he exhausted his administrative remedies. A defendant may move to modify a term of imprisonment with a district court only after “the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf *or* the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier[.]” 18 U.S.C. § 3582(c)(1)(A) (emphasis added). The burden to prove exhaustion belongs to the defendant. *See United States v. Hemmelgarn*, 15 F.4th 1027, 1029 (10th Cir. 2021) (“[The defendant] has failed to provide proof that he exhausted his administrative rights as is required under § 3582(c)(1)(A).”); *United States v. Patton*, No. 16-cr-40113, 2022 WL 2134197, at *2 (D. Kan. June 14, 2022).

Bureau of Prisons regulations elaborate the statutory requirements. A defendant may first move for compassionate release under 28 C.F.R. § 571.61. This request shall ordinarily be in writing and submitted to a warden. 28 C.F.R. § 571.61. If the warden denies the request, then “the inmate will receive written notice and a statement of reasons for the denial.” 28 C.F.R. § 571.63. At that point, the defendant may appeal the warden’s denial “through the Administrative Remedy Procedure (28 C.F.R. part 542, subpart B).” *Id.*

Mr. Mendoza-Alarcon does not indicate that he initially moved for compassionate release with the warden of his facility, Great Plains Correctional Institute. *See* Mot. to Reduce Sentence 1-2 (ECF No. 313). Nor does Mr. Mendoza-Alarcon state that he pursued relief through the Bureau of Prison’s Administrative Remedy Procedure. *See id.* As a result, Mr. Mendoza-Alarcon has not

satisfied the exhaustion requirement. This failure to exhaust administrative remedies compels the denial of his motion for compassionate release. *See Malouf v. SEC*, 933 F.3d 1248, 1256 (10th Cir. 2019) (noting that “courts lack discretion to excuse the failure to exhaust administrative remedies” required by statute).

III. Consideration of Merits

In the alternative, Mr. Mendoza-Alarcon’s motion fails on its merits. The Court follows a three-step test when analyzing whether compassionate release is justified. *United States v. McGee*, 992 F.3d 1035, 1042-43 (10th Cir. 2021). A court may grant a defendant’s motion for a reduced sentence if the court finds that: (1) extraordinary and compelling reasons warrant a sentence reduction; (2) the sentence reduction reflects applicable policy statements issued by the Sentencing Commission; and (3) the reduction fits the district court’s consideration of the 18 U.S.C. § 3553(a) factors. *Id.* A court may deny compassionate release motions when one of the three steps is lacking without addressing the others. *Id.* at 1043.

Medical conditions rarely provide an extraordinary and compelling reason to warrant compassionate release. *See United States v. Willis*, 382 F. Supp. 3d 1185, 1188 (D.N.M. 2019). With respect to the pandemic, “[t]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release.” *United States v. Purify*, No. 20-cr-05075, 2021 WL 5758294, at *4 (10th Cir. Dec. 3, 2021) (quoting *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020)). Relief for incarcerated persons who are fully vaccinated is rarer still. *See, e.g., United States v. Wills*, 541 F. Supp. 3d 1185, 1190-91 (D. Or. 2021) (collecting cases).

Mr. Mendoza-Alarcon appears to justify his request for compassionate release by citing the pandemic. *See* Mot. to Reduce Sentence 1-2 (ECF No. 313). He does not identify, however, how

the pandemic has been particularly difficult for him. As a result, Mr. Mendoza-Alarcon has not shown the presence of extraordinary and compelling circumstances. *See Purify*, 2021 WL 5758294, at *4. Mr. Mendoza has also been vaccinated, which further cuts against a finding of extraordinary and compelling circumstances. *See, e.g., Wills*, 541 F. Supp. 3d at 11; *see also* Gov.'s Ex. 1, at 1 (ECF No. 317-1).

Because Mr. Mendoza-Alarcon does not satisfy one of the three *McGee* steps, he is not entitled to compassionate release under 18 U.S.C. § 3582(c)(1)(A). *See McGee*, 992 F.3d at 1043.

IV. Conclusion

IT IS THEREFORE ORDERED that Mr. Mendoza-Alarcon's *Motion to Reduce Sentence Under 18 U.S.C. § 3582 and First Step Act of 2018* (ECF No. 313) is **DENIED**.



SENIOR UNITED STATES DISTRICT JUDGE